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IN THE MATTER OF:	)	
	)	
<b>NORTH CAROLINA SECURITIES DIVISION,</b>	)	
	)	
Petitioner,	)	
	)	<b>FINAL CONSENT ORDER</b>
<b>vs.</b>	)	
	)	
	)	
<b>EMPOWERED INVESTOR INCORPORATED</b>	)	
(CRD #155251),	)	
	)	
<b>JAMES DARYL UPHAM (CRD #5507214), and</b>	)	<b>FILE NO. 12SEC130</b>
	)	
<b>THOMAS COWART GOOLSBY (CRD #5856947),</b>	)	
	)	
Respondents.	)	
	)	

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**THIS CAUSE** coming on to be heard and being heard before the Secretary of State of North Carolina as Administrator (the "Administrator") of the North Carolina Investment Advisers Act (the "Investment Advisers Act") and the North Carolina Securities Act (the "Securities Act"); and

**IT APPEARING** to the Administrator that the undersigned Respondents Empowered Investor Incorporated ("EI"), James Daryl Upham ("Upham"), and Thomas Cowart Goolsby ("Goolsby") desire to resolve the contentions of the Securities Division (the "Division") in this matter, without further controversy or the full use of the procedural rights available to them under North Carolina law, and that Respondents, by their written consent to this Final Order, do not object to the making of Findings of Fact and Conclusions of Law and the entry of a Final Order in conformity therewith in this proceeding. The Administrator hereby makes the following:

## **FINDINGS OF FACT**

1. Respondent EI is a North Carolina corporation with a principal office located in Wilmington, North Carolina. EI is registered with the Division pursuant to N.C.G.S. Chapter 78C as an investment adviser.
2. Respondent Upham is a North Carolina resident with a residential address in Wilmington, North Carolina. Upham is registered with the Division pursuant to N.C.G.S. Chapter 78C as an investment adviser representative associated with EI.
3. Respondent Goolsby is a North Carolina resident with a residential address in Wilmington, North Carolina. Because he has engaged in the solicitation of advisory clients through his participation in a weekly radio show conducted by Respondents, Respondent Goolsby is an investment adviser representative. As a 50% owner of EI who engages in the management of EI, he is automatically registered under N.C.G.S. Chapter 78C-17(a) as an investment adviser representative for EI.
4. The Administrator has jurisdiction over the subject matter of this proceeding and over the persons of the Respondents pursuant to the Investment Advisers Act.
5. Respondents admit the jurisdiction of the Division, do not admit the Findings of Fact or Conclusions of Law set forth in this Final Order, and consent to the entry of this Final Order by the Administrator.
6. Respondents have agreed to resolve this matter through this Final Order to avoid further protracted and expensive litigation. Respondents, as evidenced by the authorized signatures below, consent to the jurisdiction of the Administrator, consent to the entry of this Final Order, and expressly and permanently waive any and all rights under the Act, the North Carolina Administrative Procedures Act or any other law to a notice of hearing, hearing, the making of any findings of fact and conclusions of law, and all further proceedings before the Administrator to which they may be entitled related to the subject of this Final Order. Respondents expressly and permanently waive all right to seek judicial review or otherwise challenge the validity of this Final Order.
7. Respondents enter into this Final Order solely for the purpose of resolving the controversy between the Division and the Respondents. Respondents do not intend for their consent to the entry of this Final Order to be construed for any other purpose. Respondents assert that the Findings of Fact and the Conclusions of Law contained in this Final Order shall not constitute admissions on the part of Respondents for any purpose whatsoever.
8. Respondents Upham and Goolsby are the co-owners of Respondent EI.
9. As co-owners and managers of Respondent EI, Respondents Upham and Goolsby control and direct the actions of Respondent EI.
10. Respondents engage in offering and providing investment advisory services,

including investment account management services, to the investing public in North Carolina for compensation and as part of a business.

11. From 2010 through 2013, Upham and Goolsby engaged in the production of a weekly radio show broadcast from Topsail Beach, North Carolina, wherein they discussed investment advice and investment strategies for the purpose of soliciting advisory clients for EI.

12. During their weekly radio programs, Respondents Upham and Goolsby repeatedly represented to listeners, including prospective advisory clients, that they utilize a program they call the "10-20-50 Plan" in managing their clients' investment accounts. As described by Respondents, in utilizing the "10-20-50 Plan," any investment that decreases in value by 10% will be sold to limit further loss, any investment that increases in value by 20% will be sold to capture that profit, and no more than 50% of the client's account value will be invested in securities at any one time.

13. In managing their clients' investment accounts, Respondents implemented investment strategies that were different from and that conflicted with the provisions of the "10-20-50 Plan." For example, Respondents frequently refrained from selling clients' investments that had declined in value more than 10%, thereby causing greater losses than would have occurred had they observed the 10% loss in value trigger. Respondents also frequently invested more than 50% of the value of a client's account in a single security, contrary to the 10-20-50 strategy that they had publicized in their solicitation of clients.

14. Respondents also failed to inform their existing clients that they were not employing the "10-20-50 Plan" in managing their clients' accounts, and Respondents were in fact implementing investment strategies and practices different from and inconsistent with the "10-20-50 Plan."

15. Clients of EI expected and believed, based upon the statements made by Respondents, that their accounts at EI would be managed in accordance with the "10-20-50 Plan."

16. Respondents did not disclose to their listeners and prospective clients that Respondent Upham was generating losses in the investment funds entrusted to him to manage by engaging in an investment strategy that was markedly different from and that conflicted with the strategy discussed on their radio show and which Respondents purported to use in managing their clients' accounts.

17. The acts and omissions of Respondents in their solicitation of advisory clients constitute violations of N.C.G.S. §78C-8.

18. The acts and omissions of Respondents in their management of their advisory clients' accounts constitute violations of N.C.G.S. §78C-8 and 18 NCAC 06A.1801.

**BASED UPON THE FOREGOING** Finds of Fact, the Administrator makes the following:

## CONCLUSIONS OF LAW

1. The Administrator has statutory authority pursuant to N.C.G.S §78C-19(a) to enter and issue a revocation of the investment adviser registration of Respondent EI, and the investment adviser representative registrations of Respondents Upham and Goolsby.
2. Violations of N.C.G.S. §78C-8 and 18 NCAC 06A.1801 provide grounds for revocation of an investment adviser and an investment adviser representative registration.
3. There is reasonable cause to believe that each Respondent has engaged in violations of the Investment Advisers Act, specifically N.C.G.S. §78C-8 and 18 NCAC 06A.1801.
4. The entry of this Final Order is necessary and appropriate in the public interest and for the protection of investors and clients, and is consistent with the purposes fairly intended by the policies and provisions of the North Carolina Investment Advisers Act.

**NOW, THEREFORE** the Administrator, acting through her duly appointed Deputy Securities Administrator, pursuant to and under all authority granted by the North Carolina Investment Advisers Act, and based upon the foregoing Findings of Fact and Conclusions of Law does hereby enter the following Final Order:

## ORDER

**IT IS HEREBY ORDERED**, with the consent of the Respondents without admitting any of the facts and conclusions contained herein, that:

- a. The investment adviser registration of Respondent **EMPOWERED INVESTOR INCORPORATED** (CRD #155251) shall be and is revoked;
- b. The investment adviser representative registration of Respondent **JAMES DARYL UPHAM** (CRD #5507214) shall be and is revoked;
- c. The investment adviser representative registration of Respondent **THOMAS COWART GOOLSBY** (CRD #5856947) shall be and is revoked;
- d. Respondents **EMPOWERED INVESTOR INCORPORATED, JAMES DARYL UPHAM, and THOMAS COWART GOOLSBY** shall cease and desist from violating any statute, rule or regulation promulgated under the North Carolina Securities Act, the North Carolina Investment Advisers Act, or the North Carolina Commodities Act;
- e. Respondents **EMPOWERED INVESTOR INCORPORATED, JAMES DARYL UPHAM, and THOMAS COWART GOOLSBY** shall cease and desist from engaging in any conduct or practice involving any aspect of the securities or financial

services business and from transacting any business as an investment adviser, investment adviser representative, dealer, or salesman in this State;

- f. Respondents **EMPOWERED INVESTOR INCORPORATED, JAMES DARYL UPHAM, and THOMAS COWART GOOLSBY** shall not seek registration in this State as an investment adviser or investment adviser representative pursuant to N.C.G.S. Chapter 78C or as a dealer or salesman pursuant to N.C.G.S. Chapter 78A for a period of ten (10) years from the date of entry of this Final Order; and
- g. This Final Order shall be effective upon entry.

Respondents, by consenting to the entry of this Final Order, waive any right to a hearing or judicial review thereof. Respondents affirmatively state that they have freely agreed to the entry of this Final Order, and that no threats, promises or offers of any kind, other than as stated in this document, have been made by the Securities Administrator, Deputy Securities Administrator, any member of the staff of the Securities Division, or any agent or employee of the Department of the Secretary of State in connection with the entry of this Final Order.

**WITNESS MY HAND AND OFFICIAL SEAL** of the North Carolina Department of the Secretary of State, this the 21<sup>st</sup> day of May, 2014.

Time of entry: 12:26 P.M.



**ELAINE F. MARSHALL  
SECRETARY OF STATE  
OF NORTH CAROLINA and  
Securities Administrator**

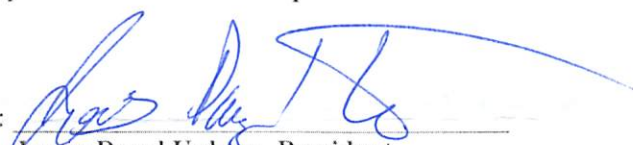
By: David S. Massey  
David S. Massey  
Deputy Securities Administrator

**CONSENT TO ENTRY OF FINAL ORDER  
EMPOWERED INVESTOR INCORPORATED**

Empowered Investor Incorporated, as an investment adviser, hereby acknowledges that it has read, understands and consents to the entry of the foregoing **FINAL ORDER**. By agreeing to this **FINAL ORDER**, Respondent Empowered Investor Incorporated does not admit the Findings of Fact or Conclusions of Law, but does not contest the jurisdiction of the North Carolina Secretary of State; waives all objections to the Findings of Fact and Conclusions of Law contained in this Final Order; and consents to the entry of this Final Order by the North Carolina Secretary of State as settlement of the matters described in this Final Order.

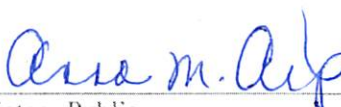
Dated this the \_\_\_\_ day of April, 2014.

**Empowered Investor Incorporated**

By:   
James Daryl Upham, President

State of North Carolina  
New Hanover County

SUBSCRIBED AND SWORN to before me this 28 day of April, 2014.

  
Notary Public

My Commission Expires 

**CONSENT TO ENTRY OF FINAL ORDER  
JAMES DARYL UPHAM**

James Daryl Upham, as an investment adviser representative, hereby acknowledges that he has read, understands and consents to the entry of the foregoing **FINAL ORDER**. By agreeing to this **FINAL ORDER**, Respondent Upham does not admit the Findings of Fact or Conclusions of Law, but does not contest the jurisdiction of the North Carolina Secretary of State; waives all objections to the Findings of Fact and Conclusions of Law contained in this Final Order; and consents to the entry of this Final Order by the North Carolina Secretary of State as settlement of the matters described in this Final Order.

Dated this the \_\_\_\_ day of April, 2014.

By: \_\_\_\_\_

James Daryl Upham

State of North Carolina

New Hanover County

SUBSCRIBED AND SWORN to before me this 28 day of April, 2014.

Anna M. ARP

Notary Public

ANNA M ARP  
NOTARY PUBLIC

NEW HANOVER COUNTY, NC

My Commission

Expires 8-27-2015

CONSENTED TO BY COUNSEL FOR RESPONDENT UPHAM

Joseph E. Zeszotarski Jr.

JOSEPH E. ZESZOTARSKI JR., Attorney at Law



**CONSENT TO ENTRY OF FINAL ORDER  
THOMAS COWART GOOLSBY**

Thomas Cowart Goolsby, as an investment adviser representative, hereby acknowledges that he has read, understands and consents to the entry of the foregoing **FINAL ORDER**. By agreeing to this **FINAL ORDER**, Respondent Goolsby does not admit the Findings of Fact or Conclusions of Law, but does not contest the jurisdiction of the North Carolina Secretary of State; waives all objections to the Findings of Fact and Conclusions of Law contained in this Final Order; and consents to the entry of this Final Order by the North Carolina Secretary of State as settlement of the matters described in this Final Order.

Dated this 8<sup>th</sup> day of April, 2014.

By: [Signature]  
Thomas Cowart Goolsby

State of North Carolina  
NEW HANOVER County

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of April, 2014.

[Signature]  
Notary Public

My Commission Expires: 6/22/2018



CONSENTED TO BY COUNSEL FOR RESPONDENT GOOLSBY

[Signature]  
JAMES L. ALLARD JR., Attorney at Law